HONOURABLE SMT. JUSTICE T. MEENA KUMARI

&

HONOURABLE JUSTICE P. LAKSHMANA REDDY

WRIT PETITION NO. 24357 OF 1998

Dated 29th September, 2005

Between:

Smt. K.B. Jayamma, wife of G. Ramanujula Reddy, aged about 55 years, Occupation: Mandal Parishad Development Officer, Mandal Parishad Panchayat Raj Department, Rayadurg, Ananthapur District.

……..Petitioner.

And :

1. The Government of Andhra Pradesh, represented by its Secretary, Panchayat Raj and Rural Development Department, Secretariat, Hyderabad, and others.

..Respondents.

ORDER: (Per the Honourable Smt. Justice T.Meena Kumari)

This writ petition is filed aggrieved by the order passed in O.A. Nos.467 of 1998 and 4795 of 1998 on 19-08-1998, under which the Administrative Tribunal, Hyderabad disposed of the O.As. by way of common order with the observations made therein.

Respondents-4, 5, 6 and 7 are the applicants in O.A. No.4671 of 1998 whereas 8th respondent is the applicant in O.A.No:4795 of 1998 before the Tribunal. The parties will be referred to as arrayed before the Tribunal for the sake of convenience.

O.A. No.4671 of 1998 is filed under section 19 of the Administrative Tribunals Act, 1985 seeking to call for the records relating to G.O.Ms.No.289, PR & RD dated 30th June, 1998 and seeking to quash the consequential proceedings Rc.No.A1/471/98, dated 2-7-1998 issued by the 3rd respondent as the same is illegal and arbitrary.

O.A. No. 4795 of 1998 is filed under section 19 of the Administrative Tribunals Act, 1985 seeking to call for records relating to issue G.O. Ms. No.289 PR& RD (Estt. V) Department, dated 30-6-1998 and set aside the same as illegal.

The Tribunal, after going into the merits of the case, having observed that the impugned orders in G.O.Ms.No.289, dated 30-6-1998 and the consequential proceedings in Rc.No.A1/471/98, dated 2-7-1998 issued by the Chief Executive Officer, Zilla Parishad, Anantapur are arbitrary and illegal, disposed of the both the O.As. by way of common judgment setting aside the G.O. and proceedings in question. Aggrieved by the same, the present writ petition has been filed by 4th respondent.

Heard the learned counsel on either side.

We have perused the order of the tribunal and also the material available on record.

The material on record goes to show that the Government has issued G.O.Ms.No:289, PR & RD, dated 30.6.1998 placing the petitioner herein over and above respondents-4 to 8 herein and the same has been challenged before the tribunal.

The tribunal having observed that no seniority can be fixed on imaginary assumptions by over sighting the fact born on record as to the actual date of appointment and the petitioner is junior to the applicants therein and therefore, the G.O. impugned therein placing the petitioner over and above the applicants therein, is on an imaginary assumption, disposed of the O.As.

In this regard, relying on a decision of the Apex Court reported in M.VENKATESWARLU & OTHERS V. GOVT. OF A.P. & OTHERS () it is contended by the learned counsel for the petitioner that the Government has got power to relax the rules under Rule 22 of the A.P. State and Subordinate Service rules in favour of an individual and in such an event, no notice need be given to the affected parties. It is further contended that the material goes to show that 17 persons have been issued notice and after considering the objections, the Government has relaxed the rule in favour of the petitioner. Therefore, the order of the tribunal is not sustainable.

At this stage, it is brought to the notice of this Court that the petitioner has already retired from service. The fact remains that the Government has got power to relax the powers in favour of an individual even without issuing notice to the affected parties.

However, in view of the fact that the direct recruitees have reported to duty on

different dates and one of the direct recruitees i.e., 5th respondent herein reported to duty on 9.12.1966 and also in view of the fact that the petitioner has already retired from service, without expressing any opinion on the merits of the case and without disturbing the issue as to the relaxation given to the petitioner, We deem it appropriate to modify the order of the tribunal to the effect that the petitioner shall be deemed to have promoted as Superintendent with effect from 2.7.1998.

Subject to the above modification, this writ petition is allowed.

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Justice T.Meena kumari

Date : 29th September, 2005.

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Justice P. Lakshmana Reddy

Dvs/Gurc.

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WRIT PETITION NO. 24357 OF 1998

(Order delivered by the Honourable Smt. Justice T. Meena Kumari)

Dated 29th September, 2005